



# CURRENT ISSUES IN EDUCATION LAW

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## **Student Free Speech in School**



## **Student Free Speech in Social Media**



## **Americans With Disabilities Act**

# STUDENT FREE SPEECH IN SCHOOL



**Students wear black armbands (1969)**



**Student gives lewd and indecent speech at school assembly (1986)**



**Students write school newspaper articles about pregnant students/divorce (1988)**



**Students post "Bong HiTS 4 Jesus" sign (2007)**

# STUDENT FREE SPEECH IN SCHOOL



**Students display confederate flags**



**Students display confederate flags**

# STUDENT FREE SPEECH IN SCHOOL – 2013 CASES



**Student handed out invitations to a church  
Christmas party (Pennsylvania)**



**Students and church pastor handed out  
rubber dolls representing a 12-week old  
fetus with bible inscription (New Mexico)**

# FOUR QUESTIONS TO GUIDE STUDENT FREE SPEECH IN SCHOOL

- 1. Is the speech vulgar, lewd, or indecent or does it promote illegal drug use?**

If so, the speech can be stopped and/or students can be disciplined for it.



# FOUR QUESTIONS TO GUIDE STUDENT FREE SPEECH IN SCHOOL

- 2. Could the speech reasonably be viewed as speech of the school itself? (i.e school newspaper, assembly, etc.)**

If so, the School can impose reasonable restrictions based upon legitimate pedagogical concerns,

And, the speech cannot promote religion.

# FOUR QUESTIONS TO GUIDE STUDENT FREE SPEECH IN SCHOOL

## 3. Is the speech interfering with the rights of others?

If so, the School can restrict the speech.

- the fact that a viewpoint causes discomfort and unpleasantness is not enough.

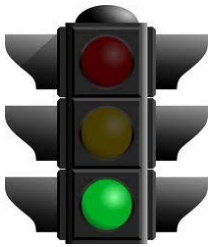
# FOUR QUESTIONS TO GUIDE STUDENT FREE SPEECH IN SCHOOL

4. **Is the speech causing a substantial disruption of school operations (or does the school have a legitimate reason to expect that the speech will cause such a disruption)?**

If so, the School can restrict the speech.

# STUDENT SPEECH IN SOCIAL MEDIA

## Two PA Cases:



Students created fake MySpace profiles of school principals, which included suggestions that principal

- was a sex addict
- hit on students and their parents
- used illegal drugs

And contained vulgar language and crude content

# STUDENT SPEECH IN SOCIAL MEDIA

## THE COURT COMMENTED THAT:

**There is no authority for a school to discipline students for conduct occurring outside of school hours.**

**The Board of School Directors may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper ... regarding the conduct and deportment of all pupils attending the public schools in the district, during such time as they are under the supervision of the board of school directors and teachers, [including time coming to and returning from school] -- Pennsylvania School Code 5-510.**

# **STUDENT SPEECH IN SOCIAL MEDIA**

## **THE COURT FOUND THAT:**

**There was no reasonable expectation that the fake profiles would disrupt school operations**

**There was no authority to prohibit lewd, vulgar, and offensive speech that occurs outside of school**

# STUDENT SPEECH IN SOCIAL MEDIA

## BEST PRACTICES:

- **Use in-school conduct as basis for discipline**
  - accessing school's Internet page is NOT enough
- **Look for evidence of disruption of school operations**
  - students talking in class is NOT enough

# AMERICANS WITH DISABILITIES ACT

## Title II of the ADA

- regulates public entities
- including public schools

## Title III of the ADA

- regulates "public accommodations"
- including private schools



# AMERICANS WITH DISABILITIES ACT

- **Reasonable modifications in policies, practices, and procedures**
- **Elimination of architectural barriers to access**
- **Operate programs that are readily accessible to and useable by persons with disabilities**

# AMERICANS WITH DISABILITIES ACT

## THREAT TO SELF:

**Does the ADA allow a school to take an adverse action against a student where the student has a disability that presents a threat to that student's own safety, but does not present a threat to others?**

# AMERICANS WITH DISABILITIES ACT

## Direct Threat:

**A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.**

# AMERICANS WITH DISABILITIES ACT

## BEST PRACTICES:

- **Conduct assessment of the individual's actual situation**
  - Must not rely on stereotypes or misperceptions of a medical condition
- **Obtain information from medical providers**

# AMERICANS WITH DISABILITIES ACT

## BEST PRACTICES (continued):

- **Consider any modifications that might eliminate the risk**
- **Choose your liability risk carefully**
  - Which lawsuit would you rather defend?  
student injury v. ADA discrimination claim

# OTHER CURRENT ISSUES IN EDUCATION LAW

- **IDEA**
  - Implementation of IEPs
  - Child-Find Obligations
  - Transition Planning
- **Section 504 (Rehabilitation Act)**
  - 504 Plans